

## **Subchapter Two: Graffiti Prevention.**

### **2.02.010 Definitions.**

*Aerosol paint container* shall mean any aerosol container, regardless of the material from which it is made, which is adapted or made for the purpose of spraying paint or other substance capable of defacing property.

*Felt tip marker* shall mean any indelible marker or similar implement with a tip which, at its broadest width is greater than one-eighth (1/8) inch, containing an ink that is not water soluble.

*Graffiti* shall mean any writing, drawing, defacing, marring, inscribing, scratching, painting or affixing of markings upon any real or personal property, which is unauthorized by the property owner or person in possession of the subject property or which can be seen by any person using the public right-of-way or from adjacent properties.

*Graffiti implement* shall mean an aerosol paint container, felt tip marker, a paint stick, a scribe or gummed label.

*Gummed label* shall mean sticker, stamp or item applied self-adhesive glue, gum, tape or any other type of adhesive which is larger than one inch by one inch and which can be applied to any surface, wall, window or sign regardless of material.

*Paint stick* shall mean any device containing a solid form of paint, chalk, wax, epoxy or other similar substance capable of being applied to a surface by pressure, and upon application, leaving a mark at least one-eighth (1/8) inch in width, and not water-soluble.

*Scribe* shall mean an implement which permanently etches glass.

*Unreasonable period* shall mean a period of time exceeding fifteen days from the day the owner, lessee, renter or occupant has been lawfully notified of the placement of the graffiti.

[*History:* formerly § 2.601; ORD. 482, 9/13/95; ORD. 638, 12/14/05]

### **2.02.020 Unlawful Property Nuisance.**

It shall be unlawful for any person owning, leasing, renting, occupying or having charge or possession of any property in the Town to maintain or allow to be maintained graffiti on such property for an unreasonable period. This section shall apply to both public and private property in all zoning districts.

[*History:* formerly § 2.602; ORD. 482, 9/13/95; ORD. 638, 12/14/05]

### **2.02.030 Graffiti Prohibited.**

(a) No person shall place graffiti or other writing upon any public or privately owned permanent building, structure or place located on publicly or privately owned real property within the Town.

(b) No person owning or otherwise in control of any real property within the Town shall permit or allow any graffiti to be placed upon or remain on any permanent structure located on such property when the graffiti is visible from the street or other public or private property, for a period in excess of that described in this subchapter for notice and removal of graffiti.

(c) Violation of this subchapter is an infraction.

*[History: formerly § 2.603; ORD. 482, 9/13/95; ORD. 638, 12/14/05]*

### **2.02.040 Notice to Abate.**

Whenever the city manager or his or her designee determines that graffiti exists on any permanent structure in the Town which is visible from the street or other public or private property, he or she shall cause a notice to be issued to abate such nuisance. The property owner shall have fifteen days after the date of the notice to remove the graffiti or the property will be subject to abatement by the city.

*[History: formerly § 2.604; ORD. 482, 9/13/95; ORD. 638, 12/14/05]*

### **2.02.050 Service of Notice.**

The notice to abate graffiti shall be served upon the owner(s) of the affected premises as such owner's name and address appears on the last equalized property tax assessment rolls. In addition, if there is a commercial tenant using the premises, the notice shall also be served on said tenant. If there is no known address for the owner, the notice shall be sent in care of the property address. The notice required by this subchapter may be served in any one of the following manners:

(a) By personal service on the owner, occupant or person in charge or control of the property;

(b) By registered or certified mail addressed to the owner at the last known address of said owner. If this address is unknown, the notice will be sent to the property address. In addition, where the property is occupied, a copy of the notice shall be delivered to the occupant.

*[History: formerly § 2.605; ORD. 482, 9/13/95; ORD. 638, 12/14/05]*

## **2.02.060 Removal of Graffiti.**

(a) *Property Owner's Consent to Remove.* Whenever the city manager or his or her designee determines that graffiti exists on any permanent structure in the Town which is visible from the street or other public or private property, and a notice to abate has been served as provided in Section 2.02.040, and the graffiti has not been abated within ten days from the date of service, the city manager or his or her designee is authorized to provide for and use public fund, if necessary, to remove graffiti upon the following conditions:

(1) **Public Property.** Whenever the city manager or his or her designee determines that a graffiti nuisance exists upon property owned by the city, it shall be removed, replaced or repaired as soon as possible. When the property is owned by a public entity other than the city, the removal of the graffiti nuisance is authorized after securing written consent of the public agency having jurisdiction over the property.

(2) **Private Property.** Where the subject property is privately owned, the removal, repair or replacement of the graffiti nuisance is authorized after the city manager, or his or her designee, secures the written consent of the owner of the property and the owner executes a release and waiver approved as to form by the city attorney.

(3) The graffiti nuisance shall be removed, replaced or repaired as authorized herein, but the removal, replacement or repair shall not involve the painting, replacement or repair of a more extensive area than is necessary to abate the nuisance.

(b) *Removal by City Without Consent of Property Owner.* The city manager may initiate proceedings to abate graffiti maintained contrary to the provisions of this subchapter only after the following has occurred:

(1) A notice to abate has been issued and served; and

(2) The property owner has failed to either remove the graffiti or consent to its removal by the city within the time period specified in the notice to abate.

[History: formerly § 2.606; ORD. 482, 9/13/95; ORD. 638, 12/14/05]

## **2.02.070 Hearing Prior to Abatement, Notice of Hearing.**

(a) Prior to the city abating graffiti on private property without the consent of the owner, a hearing before the city manager or his or her designee shall be held, at which time the property owner shall be given an opportunity to be heard regarding the proposed abatement. A notice of the time and place of the hearing before the city manager or his or her designee shall be sent to the property owner not less than ten days prior to the hearing. Service shall be as set forth in Section 2.02.050, and copy therefore shall be conspicuously posted on the affected premises on the date the notice is so served. Said notice shall be posted and served at least ten days before the time fixed for such hearing; proof of such posting and service of notice shall be made by declaration under penalty of perjury filed with the hearing officer.

(b) The failure of any person to receive the notice shall not affect the validity of any proceedings under the subchapter.

[History: formerly § 2.607; ORD. 482, 9/13/95; ORD. 638, 12/14/05]

#### **2.02.080 Conduct of Hearing.**

The hearing to determine whether a nuisance exists shall be conducted by the city manager or his or her duly authorized representative as hearing officer. At the hearing, the hearing officer shall receive and consider all relevant evidence. Interested person shall be given a reasonable opportunity to be heard in conjunction therewith. Based upon the written evidence so presented, the hearing officer shall determine whether a nuisance within the meaning of this subchapter exists.

[History: formerly § 2.608; ORD. 482, 9/13/95; ORD. 638, 12/14/05]

#### **2.02.090 Order of Abatement.**

Within ten days after the hearing, the city manager or his or her designee shall give written notice of the decision to the owner and to any other person other person requesting the same. If a nuisance is determined to exist, the notice shall contain an order of abatement directed to the owner of the affected property or the person in control and/or charge of the property, and shall set forth the nature of the graffiti, its location on the premises and the time and manner for its abatement. The city manager may impose such conditions as are reasonably necessary to abate the graffiti. The decision of the city manager may be appealed to the city council by filing a written request for appeal with the city manager within ten days after the city manager's notice of decision to the owner.

[History: formerly § 2.609; ORD. 482, 9/13/95; ORD. 638, 12/14/05]

#### **2.02.100 Abatement.**

If the city manager's decision is not appealed and the nuisance is not abated within the time set by the order of abatement, the city manager or his or her designee is authorized to enter upon the premises and to abate the graffiti nuisance through utilization of labor, equipment and materials directed by the city manger. The graffiti shall be removed, replaced or repaired as authorized herein, but the removal shall not involve the painting or repair of a more extensive area than is necessary for such removal. The city administrator shall then prepare a statement of the fact of such abatement and of the expense incurred in abatement and shall file the statement with the city manager. Such statement shall identify the premises and state the cost of the action taken. If the premises include more than one lot, each separate lot, or all of the lots may be set forth in the same statement.

[History: formerly § 2.610; ORD. 482, 9/13/95; ORD. 638, 12/14/05]

### **2.02.110 Assessment of Cost.**

Upon completion of the work required to abate the graffiti, the cost to the city to perform such work shall be assessed against the property owner pursuant to the procedures set forth in the Uniform Housing Code adopted by the Town of Colma.

[History: formerly § 2.611; ORD. 482, 9/13/95; ORD. 638, 12/14/05]

### **2.02.120 Furnishing Graffiti Implements to Minors Prohibited.**

It is unlawful for any person, other than a responsible adult, or a school teacher for purposes of instruction, to knowingly sell, exchange, give, loan or in any way furnish to any minor a graffiti implement.

[History: formerly § 2.612; ORD. 482, 9/13/95; ORD. 638, 12/14/05]

### **2.02.130 Possession of Graffiti Implements.**

Except as may be authorized by the City, no person shall have in his or her possession any graffiti implement while at or on the premises of any public park, playground, swimming pool, recreational facility or while loitering near an underpass, bridge abutment, storm drain or other similar type of infrastructure.

[History: formerly § 2.613; ORD. 482, 9/13/95; ORD. 638, 12/14/05]

### **2.02.140 Restriction on Storage of Graffiti Implements.**

Every person who owns, conducts, operates or manages a retail commercial establishment selling graffiti implements shall store or cause such graffiti implements to be stored in an area viewable by, but not accessible to the public in the regular course of business without employee assistance, pending legal sale of such graffiti implements.

[History: formerly § 2.614; ORD. 482, 9/13/95; ORD. 638, 12/14/05]

### **2.02.150 Sign Required.**

Every person who owns, conducts, operates or manages a retail commercial establishment which offers for sale or sells graffiti implements shall display at the location of retail sale of such graffiti implements a sign, in letters at least three-eighths (3/8") of an inch high, clearly visible and legible to customers which states as follows:

**IT IS UNLAWFUL FOR THIS BUSINESS TO SELL OR GIVE TO  
INDIVIDUALS UNDER THE AGE OF EIGHTEEN YEARS  
AEROSOL PAINT CONTAINER, INDELIBLE MARKER PEN, OR  
GLASS ETCHING TOOL.**

[History: formerly § 2.615; ORD. 482, 9/13/95; ORD. 638, 12/14/05]

## **2.02.160 Parental Responsibility.**

Pursuant to Section 1714.1(b) of the California Civil Code, every parent or other legal guardian having custody or control of a minor who defaces property by inscribing graffiti thereon shall be jointly and severally liable with such minor for any resulting damages incurred by property owner, or any other person, in an amount not to exceed ten thousand dollars for each such act of defacement and for all attorney's fees and court costs incurred in connection with the civil prosecution for damages.

[History: formerly § 2.616; ORD. 482, 9/13/95; ORD. 638, 12/14/05]

## **2.02.170 Rewards.**

(a) *Amount.* Pursuant to Section 53069.5 of the California Government Code the city may pay to any person who provides information which leads to the arrest and conviction of any person who maliciously injures or destroys another's property by the use of graffiti, a reward as established from time to time by City Council resolution. The amount of any reward paid pursuant to this subchapter may be sought from the person arrested and convicted as restitution in addition to any other restitution associated with the removal of graffiti.

(b) Claims for Rewards.

(1) Contents. Claims for rewards under this subchapter shall be filed with the City. Each claim shall:

(A) Specifically identify the date, location and kind of property damaged or destroyed;

(B) Identify by name the person who was convicted or confessed to the damage or destruction of property;

(C) Identify the court and the date upon which the conviction occurred or the place and date of the confession.

(c) *Investigation and Verification.* No claim for reward shall be allowed by the City Council unless an authorized representative of the City investigates and verifies the accuracy of the claim and recommends that it be allowed.

(d) *Liability.* The person committing the graffiti, or if an unemancipated minor, the custodial parent of said minor shall be liable for reward paid pursuant to this subchapter.

(e) *Multiple Contributors.* In the event of multiple contributors of information, the reward amount shall be divided by the City in the manner it shall deem appropriate.

For the purposes of this section, diversion of the offending violator to a community service program or a plea bargain to a lesser offense shall constitute a conviction.

[*History.* formerly § 2.617; ORD. 482, 9/13/95; ORD. 638, 12/14/05]

#### **2.02.180 Remedies Cumulative.**

The remedies provided in this subchapter are in addition to the other remedies and penalties available under this code and the laws of the State of California.

[*History.* formerly § 2.618; ORD. 482, 9/13/95; ORD. 638, 12/14/05]

